



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

**Requestor Name**

ERIC A VANDERWERFF, DC

**Respondent Name**

TRUMBULL INSURANCE CO

**MFDR Tracking Number**

M4-17-2663-01

**Carrier's Austin Representative**

Box Number 47

**MFDR Date Received**

MAY 9, 2017

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "The physical therapy services rendered during the date of service listed above were pre-authorized by the carrier...and **MUST BE PAID, BY LAW.**"

**Amount in Dispute:** \$934.80

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "Review of the disputed dates of service, shows that the medical documentation submitted with billing does not support the units billed."

**Response Submitted by:** The Hartford

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
April 27, 2016 May 2, 2016 May 4, 2016	CPT Code 97140-59-GP	\$49.20 \$98.40 \$98.40	Not eligible for review
May 9, 2016 May 11, 2016 May 16, 2016 May 26, 2016 June 1, 2016 June 2, 2016 June 13, 2016	CPT Code 97140-59-GP (X2)	\$98.40/ per day	\$675.36
TOTAL		\$934.80	\$675.36

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.

2. 28 Texas Administrative Code §134.203 effective March 1, 2008, sets the reimbursement guidelines for the disputed service.
3. 28 Texas Administrative Code §134.600, effective July 1, 2012, requires preauthorization for specific treatments and services.
4. 28 Texas Administrative Code §137.100, effective January 18, 2007, sets out the use of the treatment guidelines.
5. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - 119-Benefit maximum for this time period or occurrence has been reached.
  - 168-Billed charge is greater than maximum unit value or daily maximum allowance for physical therapy/physical medicine services.
  - B13-Previously paid. Payment for this claim/service may have been provided in a previous payment.
  - 247-A payment or denial has already been recommended for this service.

## **Issues**

1. Did the requestor waive the right to medical fee dispute resolution?
2. Is the requestor entitled to reimbursement?

## **Findings**

1. 28 Texas Administrative Code §133.307(c)(1) states: "Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section. (A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute." The dates of the services in dispute are April 27, 2016 through June 13, 2016. The request for medical dispute resolution was received in the Medical Fee Dispute Resolution (MFDR) section on May 9, 2017. This date is later than one year after the date(s) of service in dispute, April 27, May 2, and May 4, 2016. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307(c)(1)(B). The Division concludes that the requestor has failed to timely file this dispute with the Division's MFDR Section; consequently, the requestor has waived the right to medical fee dispute resolution for dates of service April 27, May 2, and May 4, 2016.
2. According to the explanation of benefits, the respondent denied reimbursement for the disputed physical therapy services, CPT code 97140-59-GP, based upon Benefit maximum for this time period or occurrence has been reached" and "168-Billed charge is greater than maximum unit value or daily maximum allowance for physical therapy/physical medicine services".

28 Texas Administrative Code §134.203(a)(5) states "Medicare payment policies" when used in this section, shall mean reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the Centers for Medicare and Medicaid Services (CMS) payment policies specific to Medicare."

Per 28 Texas Administrative Code §134.600(p)(5)(A) the non-emergency healthcare that requires preauthorization includes: "(5) physical and occupational therapy services, which includes those services listed in the Healthcare Common Procedure Coding System (HCPCS) at the following levels: (A) Level I code range for Physical Medicine and Rehabilitation, but limited to:

- (i) Modalities, both supervised and constant attendance;
- (ii) Therapeutic procedures, excluding work hardening and work conditioning."

The requestor states that "The physical therapy services rendered on this date of service listed above were pre-authorized by the carrier...and **MUST BE PAID, BY LAW.**" In support of their position, the requestor submitted copies of preauthorization reports that indicate the following:

April 25 Pre-Authorization Request for Physical Medicine Report seeking preauthorization for six (6) sessions of chiropractic spinal adjustments (98943); Joint Mobilization (97140-59), Myofascial Therapy (97140-59); Rehabilitative Exercises – 4 units (97110); "Russian" Electric Muscle Stimulation (G0283)." The respondent gave preauthorization for this request.

The May 20, 2016 report supports preauthorization was obtained for an additional 4 sessions of CPT codes 98943, 97140, 97110 and G0283.

28 Texas Administrative Code §134.203(a)(7) states "Specific provisions contained in the Texas Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this chapter, shall take precedence over any conflicting provision adopted or utilized by CMS in administering the

Medicare program. Independent Review Organization (IRO) decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over any Division rules and Medicare payment policies.”

The respondent is basing the denial of payment for the disputed physical therapy services on Medicare policies that limit the number of units/sessions of physical therapy allowed per claim. Per 28 Texas Administrative Code §134.203(a)(7) when there is a conflict between Medicare policies and the division rules, the division rules take precedence. Because the requestor obtained preauthorization for the disputed services, this takes precedence over the limits set out in Medicare policies. The division finds that the requestor obtained preauthorization for the disputed services and reimbursement is due.

Per 28 Texas Administrative Code §134.203(c)(1)(2), “To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications.

(1) For service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Radiology, Pathology, Anesthesia, and Surgery when performed in an office setting, the established conversion factor to be applied is \$52.83. For Surgery when performed in a facility setting, the established conversion factor to be applied is \$66.32.

(2) The conversion factors listed in paragraph (1) of this subsection shall be the conversion factors for calendar year 2008. Subsequent year's conversion factors shall be determined by applying the annual percentage adjustment of the Medicare Economic Index (MEI) to the previous year's conversion factors, and shall be effective January 1st of the new calendar year. The following hypothetical example illustrates this annual adjustment activity if the Division had been using this MEI annual percentage adjustment: The 2006 Division conversion factor of \$50.83 (with the exception of surgery) would have been multiplied by the 2007 MEI annual percentage increase of 2.1 percent, resulting in the \$51.90 (with the exception of surgery) Division conversion factor in 2007.”

On the disputed dates of service, the requestor billed CPT codes 98943, G0283-GP, 97140-59-GP (X2), 97110-GP (X4). CMS published Medical Learning Network (MLN) Matters, effective January 1, 2011 which states in part “Many therapy services are time-based codes, i.e., multiple units may be billed for a single procedure. The Centers for Medicare & Medicaid Services (CMS) is applying a MPPR to the practice expense payment when more than one unit or procedure is provided to the same patient on the same day, i.e., the MPPR applies to multiple units as well as multiple procedures. Full payment is made for the unit or procedure with the highest PE payment. For subsequent units and procedures, furnished to the same patient on the same day, full payment is made for work and malpractice and 80 percent payment for the PE for services furnished in office settings and other non-institutional settings and at 75 percent payment for the PE services furnished in institutional settings.” The multiple procedure rule discounting applies to the disputed service.

To determine the MAR the following formula is used: (DWC Conversion Factor/Medicare Conversion Factor) X Participating Amount = Maximum Allowable Reimbursement (MAR).

The 2016 DWC conversion factor for this service is 56.82.

The Medicare Conversion Factor is 35.8043

Review of Box 32 on the CMS-1500 the services were rendered in zip code 75061, which is located in Irving, Texas; therefore, the Medicare participating amount is based on locality “Dallas, Texas”.

Using the above formula and multiple procedure discounting rule the Division finds the following:

Code	No. of Units	Medicare Participating Amount	MAR	MAR X No. of Units	MAR X No. of Units X DOS	IC Paid	Amount Due
97140	2	\$30.40	\$48.24	\$48.24 X 2 = \$96.48	\$96.48 X 7 = \$675.36	\$0.00	\$675.36

## **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$675.36.

## ***ORDER***

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$675.36, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

_____	_____	6/30/17
Signature	Medical Fee Dispute Resolution Officer	Date

## ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**